HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO.756 OF 2006

BETWEEN

Government of Andhra Pradesh
Rep. by its Secretary to Government,
Social Welfare Department,
Hyderabad

.....Appellant

And

Cheemala Gopaiah & others

.....Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri C.V. Mohan Reddy,
Advocate
General Social Welfare

Counsel for Respondent Nos. 1 to 70 : Shri Nuty Rammohan Rao

Counsel for Respondent No.71 : Shri M. Sridhar Reddy

Dated: 31.07.2006

Per G.S. SINGHVI, CJ

A little vigilance on the part of the authorities of the Social Welfare Department of the Government of Andhra Pradesh and the officers of Girijan Co-operative Corporation Limited (for short 'the Corporation') would have obviated the necessity of filing this appeal by the State Government against order dated 08.04.2005 passed by the learned Single Judge in Writ Petition No. 20576 of 2003 and would have saved substantial time of the Court which had to be spent in dealing with and disposing this appeal.

Why we have made the aforementioned observation will be evinced from the order, which we are recording hereunder.

The respondents, who are retired employees of the Corporation filed writ petition under Article 226 of the Constitution of India for issue of a mandamus to the non-petitioners i.e. the Corporation and the Government of Andhra Pradesh to fix their pay as per Revised Pay Scales of 1999 and to pay them the following benefits:

i) arrears of salary from 1-4-1999 to 30-6-2001 consequent upon pay fixation;
ii) the differential amounts on computing the ex-gratia payable under VRS as per the revised pay scale;
iii) the differential amount of gratuity as per the Revised Pay Scales;
iv) the differential amounts on encashment of earned leave on fixation of pay as

per the Revised Pay Scales, 1999;

v) to pay the pension on application of RPS 1999 including arrears;

vi) the interest on the above amounts from 8-1-2003.

The claim of the writ petitioners was primarily founded on the premise that even though the pay scales notified by the State Government from time to time are applicable to the employees of the Corporation, the benefit of Revised Pay Scales has not been extended to the employees of the Corporation with effect from 1-7-1998, and, in this manner, their fundamental right to equality has been violated.

In the affidavit filed by him, Sri T.Venkateswarlu, petitioner No.67 (respondent No.67 herein), averred that by taking advantage of the Voluntary Retirement Scheme (for short, 'VRS') introduced by the Corporation, the petitioners had sought voluntary retirement with effect from 30-6-2001. He further averred that after retirement of the petitioners, the management of the Corporation adopted the Revised Pay Scales prescribed by the State Government, but benefit thereof has not been given to them. According to Sri T.Venkateswarlu, the failure of the Corporation to implement the Revised Pay Scales with effect from 1-7-1998 is wholly arbitrary and discriminatory.

In a rather lopsided counter-affidavit filed by Shri A. Vidyasagar, Vice-Chairman and Managing Director of the Corporation, it was averred that the Corporation is willing to extend the benefit of Revised Pay Scales to all its employees on par with the government employees, but due to financial stringency it is not possible to do so with retrospective effect. It was further averred that vide Circular Rc.No.2451/99 Admn.2 dated 08.01.2003, the Revised Pay Scales have been implemented with effect from 2003 and proposal has been sent to the State Government to allow payment of arrears to the employees with effect from 1999. For the sake of convenient reference, the averments contained in paragraphs 6 and 7 of the affidavit of Sri A.Vidyasagar are reproduced below:

> 6. I submit that it is true that the Govt. of A.P. vide its G.O.Ms.No.132 Social Welfare (GCC.2) Dept., dt.20-12-2002, have issued orders permitting the GCC Ltd., Visakhapatnam to adopt Revised Pay Scales, 1999 to its employees in terms of G.O. (P) No.114, Finance and Plng. (FW.PC-I) Dept., dt.11.8.1999 wherein the Revised Pay Scales though were given effect from 1-7-1998, but the monetary benefit was extended from 1-4-1999 only. It is a fact that the Govt. of A.P. has permitted GCC to extend the RPS 1999 to its employees invoking certain conditions wherein the GCC was forced to state that it shall not seek for further assistance with regard to implementation of RPS 1999. Since the permission to GCC to extend RPS 1999 was pending with the Government for a long time, a decision was taken by the Board, keeping in view the larger interest of employee community as a whole to give immediate effect the RPS 1999, meet the requirement through its internal resources from the income generated by the organization through its business activities and informed the Govt. of A.P. vide Lr.Rc.2415/99 A2 dt.29-6-2002. In the spirit, the Govt. of A.P. subsequently permitted the GCC to implement RPS 1999 to its employees based on the commitment given by GCC.
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> 7. It is however submitted that the GCC has implemented the RPS, 1999 to its employees and instructions were issued vide Circular Rc.No.2451/99 Admn.2 dt.8-1-2003. In the said circular it was clearly mentioned about the date from which RPS 1999 would be implemented and the inability of the organization

to pay the arrears, as the financial commitment is in Crores of rupees, and it is not possible to bear such huge burden by a Co-op.Society like GCC. Further no assurance was given to the retiring employees to release arrears from internal resources. The matter was discussed with all Employees Unions. Having come to an understanding it was decided to effect RPS 1999 w.e.f. 1-1-2003 only from within its resources; and to appeal to the Govt. of A.P. for sanction of funds to meet arrears. It was also informed to all the existing employees and employees retired under VRS that separate orders would be issued for payment of arrears from 1-4-1999 to 31-12-2002 as and when the Government release funds. Since the petitioners were retired on 30-6-2001, the VRS benefits were settled as per the pay scales then in vogue. As the monetary benefit was given from 1-1-2003, the pay was fixed under RPS 1999 for the employees who were retired after 1-1-2003."

The Government of Andhra Pradesh which was impleaded as party in the writ petition did not choose to file counter affidavit to controvert the claim of the writ petitioners.

The learned Single Judge took cognizance of the averments contained in paragraph 7 of the counter affidavit filed on behalf of the Corporation and disposed of the writ petition by recording the following order:

"Heard both sides and at their request, the main writ petition itself is taken up for disposal.

The petitioners, who are employees of the respondent, filed this Writ Petition, inter alia, seeking for VRS benefits on the basis of Revised Pay Scales, 1999 with effect from 01.07.1998. Though several contentions have been raised in the Writ Petition, however, in the counter-affidavit filed by the respondents, it is stated that there cannot be any dispute to the entitlement of the petitioners in respect of the aforesaid benefits, but since the government is yet to release funds, they cannot be made now, and as and when the funds are released from the Government, the same will be paid.

Having regard to the above and especially in view of the statement made in para 7 of the counter affidavit, it is not necessary to go into the merits of the case. It would suffice in the interest of justice to direct the respondents to make the payments at the earliest in terms of the statement made in the counter affidavit as and when the amounts are released by the second respondent. It is also needless to observe that the second respondent shall immediately finalise the entire process at the earliest within a period of two weeks from the date of receipt of copy of this order. "

The main ground on which the appellant has questioned the order of the learned Single Judge is that the same has been passed without considering the fact that the proposal sent by the Corporation for payment of arrears of the Revised Pay Scales to the employees with retrospective effect had already been rejected by the Government. Along with the memorandum of appeal, a copy of letter No.2766/GCC-2/2003-1 dated 14-11-2003 vide which the State Government unequivocally rejected the proposal sent by the Corporation for grant of approval to pay the arrears of salary to the employees on par with the government employees has been filed.

We have heard learned counsel for the parties and perused the record. We are sure if the contents of letter dated 14-11-2003 had been brought to the notice of the learned Single Judge, he would not have passed the order under challenge. In that event, the learned Single Judge would have asked the petitioners either to amend the writ petition or file fresh one.

In the course of hearing, we asked the learned Advocate General as to why letter dated 14-11-2003 sent by the Government to the Vice-Chairman and Managing Director of the Corporation had not been brought to the notice of the learned Single Judge. The same question was addressed to Shri Nuty Rammohan Rao, Advocate representing the respondents. However, neither of them could give satisfactory reply. Learned counsel appearing for the Corporation also could not explain as to why officers of the Corporation had not informed him about the communication dated 14-11-2003. It is, therefore, reasonable to conclude that officers of the Government and the Corporation were extremely remiss and their failure to bring to the notice of the learned Single Judge that the Government had already rejected the proposal of the Corporation for permission to pay the arrears of salary to the employees resulted in unnecessary extension of this litigation. In our opinion, but for the negligence on the part of the officers of the Social Welfare Department in properly briefing the Government Pleader and of the Corporation to inform the advocate appearing on its behalf that the Government had already rejected the proposal sent by the Corporation as early as on 14-11-2003, the learned Single Judge would not have passed the order under challenge.

Be that as it may, in view of letter dated 14-11-2003, we deem it proper to allow the appeal, set aside the order of the learned Single Judge with the direction that the writ petition be listed before an appropriate Bench for fresh adjudication. Ordered accordingly.

Before parting with the case, we consider it proper to mention that on the last date of hearing i.e. 28-7-2006, Shri V. Nagi Reddy, Secretary, Social Welfare Department had appeared in person and stated that action has been initiated against five identified officials and officers of the department and also the Girijan Cooperative Corporation, Visakhapatnam. We are sure that the disposal of this appeal will not bring an end to the action initiated by the department against the officers and officials. Rather, we are convinced that the same would be taken to logical end so that the State Government is not put to an awkward position and is saved of the unnecessary financial burden.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

31.07.2006

svs